



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. L. Elliott
County Attorney
Stephens County
Breckenridge, Texas

Dear Sir:

Opinion No. 0-4945

Re: Is the discontinuance of the service of county auditor entirely within the discretion of the district judge, or is said judge duty bound to discontinue the services of said office upon recommendation of the commissioners' court?

Your letter of October 15, 1942, requesting the opinion of this department on the above stated question reads in part as follows:

"I have the following inquiry for which I seek an opinion from your office:

"At the present time, we have a County Auditor who was appointed by the District Judge of 90th Judicial District in Stephens County, Texas, sometime last year. The 1940 census showed Stephens County to have a population of 12,356. The total tax evaluation for this year as shown by the Tax Collector's record is \$10,207,530.00. There has been a question raised as to the necessity of such County Auditor, and my inquiry involves the necessary steps or procedure to be taken in abolishing said County Auditor?

"According to Art. 1646, R. C. S., the appointment of such auditor comes about when the Commissioner's Court declares such man is a public necessity. And it further provides that the judge shall have power to discontinue said office at any time after the expiration of one year when it is clearly shown that such auditor is not a public necessity.

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"Is the discontinuance of this office entirely up to the discretion of the District Judge, or is said judge duty bound to discontinue said office upon recommendation of the Commissioner's Court?"

". . . ."

Under the facts stated in your letter the county auditor was appointed in the year 1941. According to the population of said county according to the 1940 Federal census and the assessed tax valuation of said county, Stephens County was not entitled to an auditor, except when appointed to said office as provided for in Articles 1646 and 1647, Vernon's Annotated Civil Statutes. For the purposes of this opinion we think that Articles 1645, 1646 and 1647 are the pertinent statutes. We do not deem it necessary to quote these statutes.

We think that the case of Weaver v. Commissioners' Court of Nacogdoches County, 146 S. W. (2d) 170, among other things, specifically answers your inquiry.

We quote from the above mentioned case as follows:

"The legislature has undoubtedly created the office of county auditor. The creation of an office is peculiarly a legislative matter. The office exists for Nacogdoches County the same as for counties mentioned in Article 1645. In our opinion, the error in defendant's position results from the idea that the commissioners' court 'creates' the office in the manner provided by Article 1646, or brings it into operation. In our judgment, this article merely furnishes a method by which an appointment to the office is made. It will be noted that Article 1646 provides that if the commissioners' court shall determine that an auditor is a public necessity, and shall do certain things, the district judge shall appoint an auditor. After such appointment is made, the appointee 'shall qualify and perform all the duties required of county auditors by the laws of this State'. The provisions that the district judge may 'discontinue the office of such county auditor' manifestly means that he may discontinue the services of such auditor. Clearly it is not meant that the district

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judge may abolish the office. It is obvious that the legislature designedly placed the appointing power in the district judge rather than in the commissioners' court. Likewise the power to discontinue the services of the auditor was wisely placed with such judge rather than with the court. The office of auditor has the most intimate relation to the actions of the commissioners' court and the commissioners themselves. It is of the highest public concern that such an officer be left entirely free from the control of these officers, even to the extent of a possible removal by the discontinuance of the duties of his office. In addition, it is of great public importance that a skilled and experienced officer of this kind, already familiar with the financial conditions of the county and its business, should not be subjected to the possible results of each biennial election. It is our opinion that when the commissioners' court once takes action which leads to the appointment of an auditor for a county, such as is referred to in Article 1646, such county, so far as the office is concerned, and the appointment of an incumbent thereof is concerned, becomes exactly like counties designated in Article 1645; subject to the power of the district judge alone to discontinue the services of such auditor in the manner as provided in Article 1646."

In view of the foregoing it is the opinion of this department that the district judge alone has the power to discontinue the services of such auditor in the manner as provided in Article 1646, Vernon's Annotated Civil Statutes.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 27, 1942

Bernard C. Mann

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

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